

Assembly Bill No. 423

CHAPTER 157

An act to amend Sections 1695.7 and 1698 of, and to add Sections 1695.8, 1695.9, 1696.8, and 1697.3 to, the Labor Code, relating to farm labor contractors, and making an appropriation therefor.

[Approved by Governor August 7, 2001. Filed with
Secretary of State August 7, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 423, Hertzberg. Farm labor contractors: license requirements.

(1) Existing law requires every person acting in the capacity of a farm labor contractor, prior to entering into any contract or agreement to supply agricultural labor or services to an agricultural grower, to first provide the grower with his or her current state license. Under existing law, a violation of this provision is a misdemeanor, punishable as specified.

This bill would also require a person contracted by a farm labor contractor who is acting in the capacity of a farm labor contractor, prior to entering into a contract, to first provide the farm labor contractor with a copy of his or her current valid state license. The bill would require both the grower and the farm labor contractor to keep a copy of the required licenses for a period of 3 years following termination of the contract or agreement.

(2) Existing law prohibits a grower from entering into a contract or agreement with a person who fails to provide a copy of his or her license, without first making reasonable inquiry to ensure that the license is valid.

This bill, instead, would provide that a grower has an affirmative obligation to inspect the license of any person contracted as a farm labor contractor and to verify that the license is valid. The bill would also provide that a farm labor contractor has an affirmative obligation to inspect the license of any person contracted by the farm labor contractor who is acting in the capacity of a farm labor contractor and to verify that the license is valid.

The bill would require the Labor Commissioner to establish and maintain a Farm Labor Contractor License Verification Unit commencing no later than July 1, 2002, to certify the status of the licenses of farm labor contractors to growers and farm labor contractors, upon request, as specified. The obligation under the bill to verify licensure would not become operative until that unit is operational.

(3) Existing law prohibits a person from discharging, or in any manner discriminating against an employee because the employee files a bona fide complaint or claim against the employer, or takes other specified actions under the jurisdiction of the Labor Commissioner. Existing law also prohibits any employer from making, adopting, or enforcing any rule, regulation, or policy that prevents an employee from disclosing specified information to a government or law enforcement agency.

This bill would specify that a farm labor contractor, a person contracted by a farm labor contractor who is acting in the capacity of a farm labor contractor, or an employer of a farm labor contractor is subject to these provisions.

(4) Under existing law, an employer or other specified person who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the Industrial Welfare Commission, is guilty of a misdemeanor that is punishable as provided.

This bill would provide that on or after January 1, 2003, any grower, farm labor contractor, or other specified person who knowingly and willfully fails to pay or causes the failure to pay those wages, or any higher wages that have been agreed to, is guilty of a misdemeanor. The bill would prescribe various penalties, depending on the number of repeat violations. The bill would also require license revocation upon conviction of an offense for one year in the case of a first offense, 2 years in the case of a 2nd offense, and permanently in the case of a 3rd offense. By creating new crimes, the bill would impose a state-mandated local program.

(5) This bill would require the Director of Industrial Relations to establish a Farm Labor Contractor Enforcement Unit to develop a program to provide technical assistance to a district attorney's office that establishes a local farm labor contractor enforcement unit.

(6) Existing law requires a person to pay a fee of \$500 to obtain a farm labor contractor license. Under existing law, \$50 of each fee is required to be deposited into the Farmworker Remedial Account and the remaining balance is required to be paid into the State Treasury and credited to the General Fund.

This bill would make an appropriation by, instead, requiring the Labor Commissioner to expend \$350 of the remaining balance to fund the Farm Labor Contractor Enforcement Unit and the Farm Labor Contractor License Verification Unit.

(7) This bill would become operative only if SB 1125 is enacted and becomes effective on or before January 1, 2002.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1695.7 of the Labor Code is amended to read:

1695.7. (a) (1) Prior to entering into any contract or agreement to supply agricultural labor or services to a grower, a farm labor contractor shall first provide to the grower a copy of his or her current valid state license. A failure to do so is a violation of this chapter. The grower shall keep a copy of the license for a period of three years following the termination of the contract or agreement.

(2) In the event that the licensee or prospective licensee has fulfilled all the requirements for a license, but the Labor Commissioner has not been able to timely issue or renew a license, the Labor Commissioner shall issue to the person applying for a license, or renewal of a license, a letter of authorization permitting that person to operate or continue to operate as a farm labor contractor. For purposes of this section, a “valid state license” shall include a letter of authorization issued pursuant to this paragraph.

(3) (A) No grower shall enter into a contract or agreement with a person acting in the capacity of a farm labor contractor who fails to provide a copy of his or her license. A grower has an affirmative obligation to inspect the license of any person contracted as a farm labor contractor, a copy of whose license is provided to the grower pursuant to paragraph (1), and to verify that the license is valid. The grower shall request verification from the license verification unit by the close of the third business day following the day on which the farm labor contractor is engaged. The grower may be supplied services by the farm labor contractor and shall not be liable under this section for an invalid license while awaiting verification from the verification unit. The verification received from the license verification unit shall serve as conclusive evidence of the grower’s compliance with this subparagraph. The verification shall be valid until the farm labor contractor’s license expires. Failure to comply with this subparagraph is a violation of this chapter.

(B) A farm labor contractor has an affirmative obligation to inspect the license of any person contracted by the farm labor contractor who is acting in the capacity of a farm labor contractor a copy of whose license is provided to the farm labor contractor pursuant to Section 1695.9, and



to verify that the license is valid. The farm labor contractor shall request verification from the license verification unit by the close of the third business day following the day on which the individual who is acting as the farm labor contractor is engaged. The farm labor contractor may be supplied services by the acting farm labor contractor and shall not be liable under this section for an invalid license while awaiting verification from the verification unit. The verification received from the license verification unit shall serve as conclusive evidence of the farm labor contractor's compliance with this subparagraph. The verification shall be valid until the individual's license expires. Failure to comply with this subparagraph is a violation of this chapter.

(C) If a determination is made by the Labor Commissioner that the verification system is inoperable, no grower or farm labor contractor shall be liable under this section until seven business days after the Labor Commissioner determines the system is operable and has made public notice to affected parties.

(4) (A) If a contract or agreement entered into with a farm labor contractor extends beyond the expiration date of his or her license, or extends beyond the date contained in the letter of authorization to operate, the farm labor contractor shall provide to the grower, upon renewal of the license or issuance of the letter of authorization a copy of his or her current valid renewed license or a copy of a letter of authorization issued by the Labor Commissioner. In the event the farm labor contractor's license is not renewed, the farm labor contractor shall notify the grower within three days.

(B) If a contract or agreement entered into by a farm labor contractor with another farm labor contractor extends beyond the expiration date of his or her license, or extends beyond the date contained in the letter of authorization to operate, the other farm labor contractor shall provide to the farm labor contractor, upon renewal of the license or issuance of the letter of authorization a copy of his or her current valid renewed license or a copy of a letter of authorization issued by the Labor Commissioner. In the event the license of a person contracted by a farm labor contractor who is acting as farm labor contractor is not renewed, the person shall notify the farm labor contractor within three days.

(b) A failure by a farm labor contractor to provide a copy of his or her license to the grower shall not constitute a defense against liability under this section for a grower who subsequently fails to comply with the requirements of subparagraph (A) of paragraph (3) of subdivision (a). A failure by a person acting as a farm labor contractor who is contracted by a farm labor contractor to provide a copy of his or her license to the farm labor contractor shall not constitute a defense against liability under this section for a farm labor contractor who subsequently fails to comply



with the requirements of subparagraph (B) of paragraph (3) of subdivision (a).

(c) (1) Any person who acts in the capacity of a farm labor contractor without first securing a license or while his or her license has been suspended or revoked is guilty of a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or imprisonment in the county jail for not more than six months, or both, and is subject to other sanctions under this chapter, including subdivisions (b) and (c) of Section 1697.

(2) Any grower or farm labor contractor who enters into a contract or agreement in violation of this section shall be subject to a civil action by an aggrieved worker for any claims arising from the contract or agreement that are a direct result of any violation of any state law regulating wages, housing, pesticides, or transportation committed by the unlicensed farm labor contractor. The court shall grant a prevailing plaintiff reasonable attorney's fees and costs.

(3) On or after January 1, 2003, any grower, farm labor contractor, or other person acting either individually or as an officer, agent, or employee of any grower or farm labor contractor who knowingly and willfully fails to pay, or causes the failure to pay, wages as set forth in subdivision (b) of Section 1199, or any higher wages that have been agreed to, is guilty of a misdemeanor punishable as set forth in subdivision (f). However, if the prosecutor elects to prosecute any grower, farm labor contractor, or other person pursuant to this paragraph and subdivision (f), multiple failures to pay wages within a single payroll and in a single pay period shall constitute one violation.

(4) Any aggrieved worker who, claims a violation of this section, may bring a civil action for injunctive relief and lost wages as provided in Section 218, and, upon prevailing, shall recover reasonable attorney's fees and costs.

(d) As used in this section:

(1) "Business day" means any day on which the offices of the license verification unit are open to the public for the conducting of business.

(2) "Grower" means any person who owns or leases land used for the planting, cultivation, production, harvesting, or packing of any farm products, if he or she hires or uses persons acting as farm labor contractors, and includes a packing shed or a person or entity who farms the land on behalf of the land owner, whether or not he or she owns or leases the land.

(3) "Inspect," with regard to inspecting a license, means to examine the license to determine whether it reasonably appears on its face to be genuine.



(4) “License verification unit” means the Farm Labor Contractor License Verification Unit established pursuant to subdivision (e).

(5) “Verify,” with respect to verifying a license, means to contact by telephone, facsimile, website, electronic mail, or other means as determined by the Labor Commissioner, the license verification unit to confirm the validity of a license and to record in the requester’s files the unique verification number provided by the license verification unit to document that the requester confirmed the validity of the license of the farm labor contractor with whom he or she has entered into a contract or agreement to supply services.

(e) The Labor Commissioner shall establish and maintain a Farm Labor Contractor License Verification Unit commencing no later than July 1, 2002. The license verification unit shall, upon the request of a grower or farm labor contractor, certify the status of a state license issued to a farm labor contractor. The license verification unit shall assign a unique verification number to the request and the unit shall within 24 hours send by mail, or, if available, by facsimile or electronic mail, confirmation that will serve as conclusive evidence of compliance with the verification requirements of this section. The obligation under this section to verify licenses shall not become operative and the penalties for failure to verify a license shall not be applicable until three months after the license verification unit becomes operational, as certified by the State Auditor.

(f) (1) On or after January 1, 2003, a violation of paragraph (3) of subdivision (c) is a misdemeanor and is punishable as provided in subdivision (a) of Section 1697, except that the fine portion of the penalty shall be as follows:

(A) Upon conviction for a first violation, by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), and is subject to other sanctions under this chapter, including subdivisions (b) and (c) of Section 1697. Upon conviction, the Labor Commissioner shall revoke the defendant’s license and the defendant shall be ineligible for a license for a period of one year from the date of revocation.

(B) Upon a conviction for a violation committed within three years after a conviction for a prior violation, by a fine of not less than ten thousand dollars (\$10,000) and is subject to other sanctions under this chapter, including subdivisions (b) and (c) of Section 1697. Upon a second conviction, the Labor Commissioner shall revoke the defendant’s license and the defendant shall be ineligible for a license for a period of two years from the date of revocation.

(C) Upon a conviction for a violation committed within five years after a second conviction pursuant to subparagraph (B), by a fine of not



less than twenty-five thousand dollars (\$25,000), and is subject to other sanctions under this chapter, including subdivisions (b) and (c) of Section 1697. Upon a third conviction, the Labor Commissioner shall revoke the defendant's license and the defendant shall not thereafter be eligible to obtain a license.

(2) If a person is prosecuted under this subdivision, that person may not be prosecuted under any other law if the prosecution would be based upon the same set of facts as the prosecution under this subdivision.

(g) A farm labor contractor, a person contracted by a farm labor contractor who is acting in the capacity of a farm labor contractor, or an employer of a farm labor contractor is subject to Section 98.6 and 1102.5.

SEC. 2. Section 1695.8 is added to the Labor Code, to read:

1695.8. (a) No person whose license was suspended, revoked, or denied renewal by the Labor Commissioner shall perform any activity or service specified in subdivision (b) of Section 1682 or in Section 1682.3 to, for, or under the direction of a farm labor contractor, whether as an employee, independent contractor, or otherwise, for three years after the license is suspended, revoked, or denied renewal, or until the license is reinstated, whichever first occurs.

(b) No farm labor contractor shall knowingly contract with or use any person specified in subdivision (a), whether as an employee, independent contractor, or otherwise, to perform an activity or service specified in subdivision (b) of Section 1682 or in Section 1682.3 for three years after the license of the person is suspended, revoked, or denied renewal, or until the license is reinstated, whichever first occurs.

SEC. 3. Section 1695.9 is added to the Labor Code, to read:

1695.9. Any person contracted by a farm labor contractor who is acting in the capacity of a farm labor contractor shall first provide to the farm labor contractor a copy of his or her current valid state license. A farm labor contractor is responsible for ensuring that every person who is performing farm labor contracting activities on behalf of the farm labor contractor has obtained a farm labor contractor license as required by Section 1683 prior to the person's engagement in any activity described in subdivision (b) of Section 1682. A farm labor contractor who utilizes the services of another farm labor contractor who is not his or her employee shall also comply with the provisions of this chapter. The farm labor contractor is responsible for any violations of this chapter committed by his or her employee, whether or not the employee has registered as required by this chapter. The farm labor contractor shall keep a copy of the license or licenses for a period of three years following the termination of the contract or agreement.

SEC. 4. Section 1696.8 is added to the Labor Code, to read:



1696.8. (a) The director shall establish a Farm Labor Contractor Enforcement Unit. The unit shall develop a program to provide technical assistance to a district attorney's office that establishes a local farm labor contractor enforcement unit. A local farm labor contractor enforcement unit established pursuant to this section shall, whenever possible, coordinate its enforcement efforts with the Rural Crime Prevention Program in its jurisdiction, if any, established pursuant to Section 14171 of the Penal Code. Any funds appropriated to the department for purposes of this section shall be administered and allocated by the director.

(b) A local farm labor contractor enforcement unit that receives technical assistance pursuant to this section shall concentrate enhanced prosecution efforts and resources on the prosecution of farm labor contractors who violate a state law regulating wages. For purposes of this subdivision, "enhanced prosecution efforts and resources" include, but are not limited to, all of the following:

(1) "Vertical" prosecutorial representation, whereby the prosecutor who makes the initial filing or appearance performs all subsequent court appearances on a particular case through its conclusion, including the sentencing phase.

(2) Assignment of highly qualified investigators and prosecutors to farm labor enforcement cases.

(3) Significant reduction of caseloads for investigators and prosecutors assigned to farm labor enforcement cases.

SEC. 5. Section 1697.3 is added to the Labor Code, to read:

1697.3. Upon the final determination of the Labor Commissioner that a grower, a farm labor contractor, or person acting in the capacity of a farm labor contractor has failed to pay wages to its employees, the grower, farm labor contractor, or person acting in the capacity of a farm labor contractor shall immediately pay those wages. If payment is not made within 30 days of the final determination, the Labor Commissioner shall forward the matter for consideration of prosecution to the local district attorney's office.

SEC. 6. Section 1698 of the Labor Code is amended to read:

1698. All fines collected for violations of this chapter shall be paid into the Farmworker Remedial Account and shall be available, upon appropriation, for purposes of this chapter. Of the moneys collected for licenses issued pursuant to this chapter, fifty dollars (\$50) of each annual license fee shall be deposited in the Farmworker Remedial Account pursuant to subdivision (d) of Section 1684, three hundred fifty dollars (\$350) of each annual license fee shall be expended by the Labor Commissioner to fund the Farm Labor Contractor Enforcement Unit and the Farm Labor Contractor License Verification Unit, both within the



department, and the remaining money shall be paid into the State Treasury and credited to the General Fund.

SEC. 7. This bill shall become operative only if Senate Bill 1125 is enacted and becomes effective on or before January 1, 2002.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

